

ESTTA Tracking number: **ESTTA66656**

Filing date: **02/15/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Blue Marlin Corp.
Granted to Date of previous extension	02/15/2006
Address	299 Kansas Street San Francisco, CA 94103 UNITED STATES
Attorney information	Jennifer Lee Taylor Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105 UNITED STATES jleetaylor@mofo.com Phone:(415) 268-7000

Applicant Information

Application No	78567788	Publication date	10/18/2005
Opposition Filing Date	02/15/2006	Opposition Period Ends	02/15/2006
Applicant	Panama Jack International, Inc. 230 Ernestine Street Orlando, FL 32801 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and sevicees in the class are opposed, namely: Sun tan lotions, sun tan oils, sun block preparations, non-medicated lip balms, sun screens, soaps, shampoos; hair conditioner; makeup, namely eyeliners, mascaras and face powders; skin care creams and lotions, face creams; non-medicated skin peeling creams and gels; skin abrasive preparations; facial masks; non-medicated foot creams and powders, non-medicated foot lotions; non-medicated body lotions; non-medicated bath salts; bath gels; body gels; and non-medicated eye creams
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Attachments	52395-24003.31.pdf (27 pages)
Signature	/jlt2/
Name	Jennifer Lee Taylor
Date	02/15/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/567,788
Filed on February 15, 2005
Published in the Official Gazette of October 18, 2005

Blue Marlin Corp.,

Opposer,

vs.

Panama Jack International, Inc.,

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Box TTAB FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Blue Marlin Corp. ("Opposer"), a California Corporation having its principal place of business at 299 Kansas Street, San Francisco, California 94103, believes that it will be damaged by registration of the mark shown in application Serial No. 78/567,788 and hereby opposes the same.

As grounds for the opposition, it is alleged as follows:

1. Opposer designs, markets, and distributes premium quality vintage sportswear and head wear under the BLUE MARLIN® brand. Opposer has used BLUE MARLIN® trademarks

on a variety of clothing and bags since at least 1994 and the BLUE MARLIN FIVE STAR VINTAGE® trademark since at least 2001. Opposer is well known for its vintage sports line, which is found in approximately five hundred high-end specialty stores and department stores nationwide, including Bloomingdale's, Macy's, Marshall Field's, Lord & Taylor, Nordstrom, and Virgin Superstores. International sales and online sales at www.bluemarlincorp.com also account for a significant portion of Opposer's business.

2. Opposer is the owner of four U.S. Trademark Registrations in International Class 25 for marks incorporating its BLUE MARLIN® trademark for vintage style apparel, including BLUE MARLIN®, BLUE MARLIN® & Circle Design, and BLUE MARLIN FIVE STAR VINTAGE®.

3. On June 6, 2000, Opposer obtained a registration for the mark BLUE MARLIN, Registration No. 2,354,501, on the Principal Register of the United States Patent and Trademark Office for use in International Class 25 in connection with "vintage style sports clothing, namely hats, caps, dresses, jackets, jeans, jogging suits, warm-up suits, loungewear, nightshirts, sweaters, vests, halter tops, shirts, undershirts, t-shirts, sweatshirts, shorts, gym shorts, sweat shorts, sweat pants, [and] trousers." Opposer owns the mark covered by Registration No. 2,354,501, the registration, and the goodwill connected with and symbolized by the mark. A true and correct copy of a printout from the website of the United States Patent and Trademark Office setting forth the details of Registration No. 2,354,501 is attached hereto as **Exhibit A**.

4. On November 28, 2000, Opposer obtained a registration for BLUE MARLIN & Blue Circle Design, Registration No. 2,408,486, on the Principal Register of the United States Patent and Trademark Office for use in International Class 25 in connection with "vintage style apparel, namely, hats, caps, dresses, jackets, jeans, jogging suits, warm-up suits, lounge wear, nightshirts, sweaters, vests, halter tops, shirts, undershirts, t-shirts, sweatshirts, shorts, gym shorts, sweat shorts, sweat pants, [and] trousers." Opposer owns the mark covered by Registration No. 2,408,486, the registration, and the goodwill connected with and symbolized by the mark. A true

and correct copy of a printout from the website of the United States Patent and Trademark Office setting forth the details of Registration No. 2,408,486 is attached hereto as **Exhibit B**.

5. On January 7, 2003, Opposer obtained a registration of the mark BLUE MARLIN & Circle Design, Registration No. 2,671,863, on the Principal Register of the United States Patent and Trademark Office for use in International Class 25 in connection with “vintage style apparel, namely – hats, caps, dresses, jackets, jeans, jogging suits, warm-up suits, loungewear, nightshirts, sweaters, vests, halter tops, undershirts, t-shirts, sweatshirts, shorts, gym shorts, sweat shorts, trousers, khakis, and woven shirts.” Opposer owns the mark covered by Registration No. 2,671,863, the registration, which is valid, subsisting, uncanceled and unrevoked, and the goodwill connected with and symbolized by the mark. A true and correct copy of a printout from the website of the United States Patent and Trademark Office setting forth the details of Registration No. 2,671,863 is attached hereto as **Exhibit C**.

6. On October 22, 2002, Opposer obtained a registration of the mark BLUE MARLIN FIVE STAR VINTAGE, Registration No. 2,639,177, on the Principal Register of the United States Patent and Trademark Office for use in International Class 25 in connection with “vintage style apparel, namely – hats, caps, dresses, jackets, jeans, jogging suits, warm-up suits, loungewear, nightshirts, sweaters, vests, halter tops, undershirts, t-shirts, sweatshirts, shorts, gym shorts, sweat shorts, trousers, khakis, and woven shirts.” Opposer owns the mark covered by Registration No. 2,639,177, the registration, which is valid, subsisting, uncanceled and unrevoked, and the goodwill connected with and symbolized by the mark. A true and correct copy of a printout from the website of the United States Patent and Trademark Office setting forth the details of Registration No. 2,639,177 is attached hereto as **Exhibit D**.

7. Panama Jack International, Inc., Inc. is the owner of Application Serial No. 78/567,788 for BLUE MARLIN BY PANAMA JACK BRANDS in International Class 3 for “sun tan lotions, sun tan oils, sun block preparations, non-medicated lip balms, sun screens, soaps, shampoos; hair conditioner; make-up, namely eyeliners, mascaras and face powders; skin care creams and lotions, face creams; non-medicated skin peeling creams and gels; skin abrasive

preparations; facial masks; non-medicated foot creams and powders, non-medicated foot lotions; non-medicated body lotions; non-medicated bath salts; bath gels; body gels; and non-medicated eye creams.” This application was filed on February 15, 2005 based upon an alleged intent to use the mark in commerce, and published for opposition in the Official Gazette of October 18, 2005.

8. The registrations for BLUE MARLIN®, BLUE MARLIN® & Circle Design, and BLUE MARLIN FIVE STAR VINTAGE® (hereinafter collectively referred to as “Opposer’s BLUE MARLIN® Trademarks”) were all issued prior to the February 15, 2005 filing date of Application Serial No. 78/567,788.

9. The BLUE MARLIN portion of the BLUE MARLIN BY PANAMA JACK mark is identical in sight and sound to the BLUE MARLIN portions of Opposer’s BLUE MARLIN® Trademarks.

10. Applicant’s BLUE MARLIN BY PANAMA JACK BRANDS designation is likely to lead consumers to falsely believe that Opposer has collaborated with Applicant—Panama Jack, Inc.—to design something to be marketed under its BLUE MARLIN label, and that any goods Applicant sells using this designation are approved and endorsed by Opposer Blue Marlin Corp. For example, when Polo Fashions, Inc. uses its trademark POLO BY RALPH LAUREN® (U.S. Registration No. 1,057,453) customers understand that Ralph Lauren has designed something which will be sold in his POLO line of clothing and accessories. Similarly, Stella McCartney would not be able to register the designation ADIDAS BY STELLA MCCARTNEY without first entering into an agreement with the owner of the ADIDAS® trademark. “Adidas by Stella McCartney” indicates to customers that Stella McCartney has designed a line of women’s sportswear in collaboration with adidas, which will be sold by adidas. *See* adidas’ press release of September 8, 2004, *available at* http://www.press.adidas.com/en/desktopdefault.aspx/tabid-16/94_read-441/ and attached hereto as **Exhibit E** (“adidas and Stella McCartney announced a long-term partnership today...presenting the adidas by Stella McCartney sport performance collection.”)

11. Applicant has alleged that it intends to use the BLUE MARLIN BY PANAMA JACK BRANDS on various cosmetic products which are complementary to the goods sold by Opposer. It is common for fashion companies offering clothing lines to register and use their brand names in connection with cosmetics in International Class 3. For example, Polo and Tommy Hilfiger both sell cosmetics using brand names also used in connection with their clothing lines. PRL USA Holdings, Inc. is the owner of POLO SPORT both for its “wearing apparel, namely pants, shorts, jackets, T-shirts, sport shirts, knit shirts, sweatshirts, hats, socks and footwear,” in International Class 25 (U.S. Registration No. 1,951,601) and for cosmetics, including skin cream, body soap, and sun screen preparation. See U.S. Registration No. 1,858,094 attached hereto as **Exhibit F**. Tommy Hilfiger Licensing, Inc. is the owner of TOMMY HILFIGER both for its “full line of apparel, footwear and headwear” in International Class 25 (U.S. Registration No. 2,575,670) and for a “full line of skin care,” including make-up, soaps, and other toiletries. See U.S. Registration No. 2,634,237 attached hereto as **Exhibit G**. The fact that these products are complementary to Opposer’s goods is likely to cause customers to believe they are from the same source.

12. In view of the fact that Applicant’s BLUE MARLIN BY PANAMA JACK mark incorporates Opposer’s BLUE MARLIN® Trademarks wholesale; that Applicant’s BLUE MARLIN BY PANAMA JACK mark falsely creates the impression that Opposer is the source of Applicant’s goods; that Opposer’s BLUE MARLIN® Trademarks are used on sportswear distributed at stores both nationally and internationally; and that goods sold under Opposer’s BLUE MARLIN® Trademarks are complementary to those Applicant allegedly intends to sell, Applicant’s BLUE MARLIN BY PANAMA JACK mark is likely to cause confusion, or to cause mistake, or to deceive. Opposer thereby will be injured by Applicant’s BLUE MARLIN BY PANAMA JACK mark.

Filing Fee: The Patent & Trademark Office is authorized to charge \$300.00 for the Notice of Opposition to Morrison & Foerster’s **Deposit Account 03-1952 (Reference No.52395-24003.31)**.

WHEREFORE, Opposer prays that application Serial No. 78/567,788 be rejected, that no registration be issued thereon to application, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

Dated: February 15, 2006

By:

 /ccs

Jennifer Lee Taylor
Attorney for Opposer
Blue Marlin Corp.
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-6538
Facsimile: (415) 268-7522



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Typed Drawing

Word Mark BLUE MARLIN
Goods and Services IC 025. US 022 039. G & S: VINTAGE STYLE SPORTS CLOTHING, NAMELY, HATS, CAPS, DRESSES, JACKETS, JEANS, JOGGING SUITS, WARM-UP SUITS, LOUNGEWEAR, NIGHTSHIRTS, SWEATERS, VESTS, HALTER TOPS, SHIRTS, UNDERSHIRTS, T-SHIRTS, SWEATSHIRTS, SHORTS, GYM SHORTS, SWEAT SHORTS, SWEATPANTS, TROUSERS. FIRST USE: 19940730. FIRST USE IN COMMERCE: 19940930

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 75479332

Filing Date May 4, 1998

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition October 26, 1999

Registration Number 2354501

Registration Date June 6, 2000

Owner (REGISTRANT) Blue Marlin CORPORATION CALIFORNIA 625 2nd Street, Suite 105 San Francisco CALIFORNIA 94107

Attorney of Record MELVILLE OWEN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

EXHIBIT A

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EXHIBIT A




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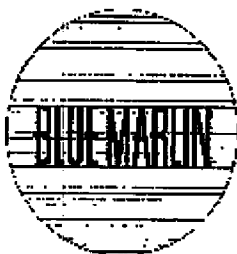
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Word Mark BLUE MARLIN
Goods and Services IC 025. US 022 039. G & S: VINTAGE STYLE SPORTS CLOTHING, NAMELY, HATS, CAPS, DRESSES, JACKETS, JEANS, JOGGING SUITS, WARM-UP SUITS, LOUNGE WEAR, NIGHTSHIRTS, SWEATERS, VESTS, HALTER TOPS, SHIRTS, UNDERSHIRTS, T-SHIRTS, SWEATSHIRTS, SHORTS, GYM SHORTS, SWEAT SHORTS, SWEAT PANTS, TROUSERS. FIRST USE: 19941000. FIRST USE IN COMMERCE: 19941000
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 26.01.21 - Circles that are totally or partially shaded.
Serial Number 75848542
Filing Date November 15, 1999
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition September 5, 2000
Registration Number 2408486
Registration Date November 28, 2000
Owner (REGISTRANT) Blue Marlin CORPORATION CALIFORNIA 540 Florida Street San Francisco CALIFORNIA 941101415
Attorney of Record Timothy J. Humphrey

EXHIBIT B

Description of Mark The mark is lined for the color blue.
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark	BLUE MARLIN
Goods and Services	IC 025. US 022'039. G & S: Vintage style apparel, namely - hats, caps, dresses, jackets, jeans, jogging suits, warm-up suits, loungewear, nightshirts, sweaters, vests, halter tops, undershirts, t-shirts, sweatshirts, shorts, gym shorts, sweat shorts, trousers, khakis, and woven shirts. FIRST USE: 19941001. FIRST USE IN COMMERCE: 19941025
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	09.01.02 - Embroidery; Labels, clothing; Stitching 26.01.21 - Circles that are totally or partially shaded.
Serial Number	76370876
Filing Date	February 15, 2002
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	October 15, 2002
Registration Number	2671863
Registration Date	January 7, 2003
Owner	(REGISTRANT) Blue Marlin CORPORATION CALIFORNIA 540 Florida Street San Francisco CALIFORNIA 94110
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead	

EXHIBIT C

Indicator LIVE

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Typed Drawing

Word Mark	BLUE MARLIN FIVE STAR VINTAGE
Goods and Services	IC 025. US 022 039. G & S: Vintage style apparel, namely - hats, caps, dresses, jackets, jeans, jogging suits, warm-up suits, lounge wear, nightshirts, sweaters, vests, halter tops, undershirts, t-shirts, sweatshirts, shorts, gym shorts, sweat shorts, trousers, khakis, and woven shirts. FIRST USE: 20010501. FIRST USE IN COMMERCE: 20010625
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	76325790
Filing Date	October 16, 2001
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	July 30, 2002
Registration Number	2639177
Registration Date	October 22, 2002
Owner	(REGISTRANT) BLUE MARLIN CORPORATION CALIFORNIA 540 Florida Street San Francisco CALIFORNIA 94110
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VINTAGE" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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EXHIBIT D



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New York/Herzogenaurach - September 8, 2004
adidas by Stella McCartney - Introducing the first true sport performance design collection for women
adidas and Stella McCartney announced a long-term partnership today in New York, presenting the adidas by Stella McCartney sport performance collection. For the first time ever a high-end fashion designer has created a functional sport performance range for women. The first collection will be available in stores across the U.S., Japan and Europe starting spring/summer 2005.

Please click on the "adidas by Stella McCartney" link for images of the collection, as well as the press release and more information.

The direct URL to this microsite is
www.press.adidas.com/stellamccartney

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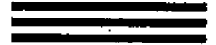
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**adidas by Stella McCartney –
Introducing The First True Sport Performance
Design Collection For Women**

New York / Herzogenaurach - September 8, 2004 - adidas and Stella McCartney announced a long-term partnership today in New York, presenting the adidas by Stella McCartney sport performance collection. For the first time ever a high-end fashion designer has created a functional sport performance range for women. The first collection will be available in stores across the U.S., Japan and Europe starting spring/summer 2005.

Please click on the "adidas by Stella McCartney" link for images of the collection, as well as the press release and more information.

The direct URL to this microsite is
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Typed Drawing

Word Mark POLO SPORT

Goods and Services IC 003. US 001 004 006 050 051 052. G & S: toilette water, after shave, shaving balm, [skin lotion,] skin cream, [talcum powder,] shaving gel, [shaving cream,] body soap, [hair shampoo,] face moisturizer, deodorants [and antiperspirants, and sun screen preparation]. FIRST USE: 19931231. FIRST USE IN COMMERCE: 19931231

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 74185470

Filing Date July 15, 1991

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition May 5, 1992

Change In Registration CHANGE IN REGISTRATION HAS OCCURRED

Registration Number 1858094

Registration Date October 11, 1994

Owner (REGISTRANT) KAPLAN, MARK N. DBA trustee of the Ralph Lauren Trust, a trust of New York INDIVIDUAL UNITED STATES c/o Skadden, Arps, Slate, Meagher & Flom 919 Third Avenue New York NEW YORK 10022

(REGISTRANT) LAUREN, RICKY DBA trustee of the Ralph Lauren Trust, a trust of New York INDIVIDUAL UNITED STATES 1107 Fifth Avenue New York NEW YORK 10021

(LAST LISTED OWNER) PRL USA HOLDINGS, INC. CORPORATION BY ASSIGNMENT, BY ASSIGNMENT DELAWARE 103 FOULK ROAD, SUITE 254 WILMINGTON DELAWARE 19803

EXHIBIT F

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record LISA M. GIGLIOTTI
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040227.
Renewal 1ST RENEWAL 20040227
Live/Dead Indicator LIVE

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Word Mark TOMMY HILFIGER

Goods and Services IC 003. US 001 004 006 050 051 052. G & S: full line of skin, nail and non-medicated hair care preparations; a full line of makeup, cosmetics and skin care products, namely a full line of toiletries; soaps; dentifrices; room fragrances and sprays; potpourri; fragranced sprays; potpourri; fragranced beads for use in the home; and scented sprays to be applied to linen. FIRST USE: 19940601. FIRST USE IN COMMERCE: 19940601

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 26.11.20 - Rectangles inside one another
26.11.21 - Rectangles that are completely or partially shaded

Serial Number 76175694

Filing Date December 5, 2000

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition July 23, 2002

Registration Number 2634237

Registration Date October 15, 2002

Owner (REGISTRANT) Tommy Hilfiger Licensing, Inc. CORPORATION DELAWARE University Plaza - Bellevue Bldg. 262 Chapman Rd, Ste 103 A Newark DELAWARE 19702

Attorney of Record Steven R Gursky

EXHIBIT G

Prior Registrations 1460988;2381662;AND OTHERS
Description of Mark The drawing is lined for the colors red and blue.
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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